

IRS Notice of Proposed Rulemaking (REG-118886-06) Clarifying Section 6411 Regulations by Cross-Reference to Temporary Regulations (T.D. 9355)

Section 6411
Section 6402

These rules are scheduled to be published in the *Federal Register* dated Aug. 27, 2007.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-118886-06]

RIN 1545-BF65

Clarification to Section 6411 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the computation and allowance of the tentative carryback adjustment under section 6411 of the Internal Revenue Code. Those temporary regulations clarify that for purposes of allowing the tentative adjustment, the IRS may credit or reduce the tentative adjustment by an assessed tax liability, whether or not that tax liability was assessed before the date the application for tentative carryback is filed, and other unassessed liabilities in certain other circumstances. Those regulations also remove all references to IRS district director or service center director, as these positions no longer exist within the IRS. The offices of the district director and service center director were eliminated by the IRS reorganization implemented pursuant to the IRS Reform and Restructuring Act of 1998. The text of the temporary regulations serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by November 26, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-118886-06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-118886-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-118886-06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Cynthia A. McGreevy, (202) 622-4910; concerning submissions of comments, Richard Hurst, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

These proposed regulations clarify the Income Tax Regulations (26 CFR part 1) under section 6411 relating to the computation and allowance of the tentative carryback adjustment. The tentative allowance is computed pursuant to §1.6411-2 but applied pursuant to §1.6411-3. These regulations clarify that for purposes of computing the allowance, the Commissioner will not consider amounts to which the taxpayer and the Commissioner are in disagreement. For purposes of applying the allowance, however, the Commissioner may credit or reduce the tentative adjustment by any assessed tax liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances. Regarding unassessed liabilities determined in a statutory notice of deficiency, see Rev. Rul. 2007-51. Regarding unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, see Rev. Rul. 2007-52. See §601.601(d)(2). The IRS plans to adopt procedures requiring IRS National Office review prior to a credit or reduction of the tentative adjustment by an unassessed liability that constitutes a rare and unusual circumstance.

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the computation and allowance of the tentative carryback adjustment under section 6411 of the Internal Revenue Code. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Proposed Effective Date

These proposed amendments to §§1.6411-2 and 1.6411-3 apply with respect to applications for tentative refund filed on or after the date these rules are published as final regulations in the **Federal Register**. No implication is intended concerning whether or not a rule to be adopted in these regulations is applicable law for applications filed prior to that date.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cynthia A. McGreevy of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6411-2 is revised to read as follows:

§1.6411-2 Computation of tentative carryback adjustment.

(a) [The text of proposed §1.6411-2(a) is the same as the text of §1.6411-2T(a) published elsewhere in this issue of the **Federal Register**].

(b) [The text of proposed §1.6411-2(b) is the same as the text of §1.6411-2T(b) published elsewhere in this issue of the **Federal Register**].

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Par. 3. Section 1.6411-3 is revised to read as follows:

§1.6411-3 Allowance of adjustments.

(a) [The text of proposed §1.6411-3(a) is the same as the text of §1.6411-3T (a) published elsewhere in this issue of the **Federal Register**].

(b) [The text of proposed §1.6411-3(b) is the same as the text of §1.6411-3T (b) published elsewhere in this issue of the **Federal Register**].

(c) [The text of proposed §1.6411-3(c) is the same as the text of §1.6411-3T (c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of proposed §1.6411-3(d) is the same as the text of §1.6411-3T (d) published elsewhere in this issue of the **Federal Register**].

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Kevin M. Brown,
Deputy Commissioner for Services and
Enforcement.